IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 6138/2006

Judgment reserved on: 25.07.2007

Judgment delivered on: September , 2007

Smt. Khazani Devi
Widow of Late Shri Sardar Singh
R/o B-106, Near Shiv Mandir
Village & Post office Kanjhawla
Delhi - 110081 ..... Petitioner

Through: Mr. N.L. Bareja, Adv.

versus

1. The Commissioner
   Municipal Corporation of Delhi
   Town Hall, Chandni Chowk,
   Delhi – 110006

2. The Deputy Commissioner
   Municipal Corporation of Delhi
   (Department of Education)
   Narela Zone, Sindu Border,
   Delhi

3. The Assistant Education Officer
   Municipal Corporation of Delhi
   (Department of Education)
   Narela Zone, Sindu Border
   Delhi ..... Respondents

Through: Ms. Samita Shankar, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

1. By way of this writ petition the petitioner widow of late Shri Sardar Singh has approached this Court seeking quashing/setting aside of the order dated 9.11.1999, whereby husband of the petitioner was prematurely retired from his service before completing the age of superannuation. The petitioner also seeks quashing of office order dated 15th July, 2002 whereby decision was taken to pay GPF and leave encashment, considering the date of retirement of the deceased as 31.8.1984 and to recover the excess payment made to the deceased.

2. The brief facts relevant for deciding the present case, inter alia, are that the husband of the petitioner was working on the post of Chowkidar on regular basis w.e.f. 5.9.1974. Prior to conferment of regular status, the petitioner was asked to produce his age proof. The

deceased was not in possession of his school leaving certificate or birth certificate. The deceased had submitted an affidavit in support of his age proof. In the absence of any such certificate the deceased was examined by the Medical Board so as to assess his age and as per the assessment of the Medical Board, the age of the deceased was considered at that time to be of about 30-32 years. The date of birth of the deceased was assessed as 1.5.1943 accordingly, and the deceased was given proper appointment letter on the said post of Chowkidar. The deceased was also alloted GPF No. BB 6148 in which he started making regular contribution. While husband of the petitioner was performing his normal duties on the said post of Chowkidar he got the shock of his life by receiving letter dated 9.11.1999 from the respondent thereby abruptly relieving him from his duties immediately from the said date. In the said letter, it was mentioned that the deceased husband of the petitioner was being relieved from his duties on the basis of his date of birth being 8.8.1924 and in terms of the directions/orders dated 16.4.1999 issued in this regard by the Additional Deputy Commissioner (Education). Husband of the petitioner was taken aback as he was neither aware of

any decision taken by the Additional Deputy Commissioner (Education) on 16.4.1999 nor came to know that on what basis his date of birth was being taken as 8.8.1924. After receiving the said letter the husband of the petitioner made efforts to find out as to why his date of birth was taken as 8.8.1924 when his age was duly certified by the Medical Board. It is further stated by the petitioner that the deceased husband of the petitioner was surprised to know that the respondent had acted at the behest of some Class IV employee who had lodged some false complaint against the deceased husband of the petitioner about his date of birth. Acting on the said complaint, the respondent verified the records of MC (Boys) School, Kanjhawla, wherefrom the date of birth of the deceased husband of the petitioner was ascertained as 8.8.1924. Believing such an information as correct the respondent without seeking any clarification or explanation from the deceased husband of the petitioner in a most illegal and arbitrary manner took the decision of prematurely retiring the husband of the petitioner. The illegality on the part of the respondent did not stop here alone, but vide office order dated 15th July, 2002 the deceased husband of the petitioner

was informed that he will be paid GPF and leave encashment taking into consideration his date of retirement as 31st August, 1984 and recovery proceedings would be launched if it was found that any excess payment was made to him. It is further stated that retiral benefits including GPF, leave encashment etc. were not given either to the deceased husband of the petitioner or to the petitioner even by taking the said date of premature retirement of the deceased i.e. 9.11.1999.

3. The right of the respondent/MCD to file the counter affidavit was closed vide order dated 4.4.2007 as despite repeated opportunities granted to the respondent no counter affidavit was filed by it.

4. I have heard learned counsel for the parties at considerable length. Counsel for the respondent has produced the records and same have been examined.

5. Counsel for the petitioner has vehemently contended that it is a case of gross injustice meted out to the petitioner and her deceased husband as without holding any enquiry or calling for any kind of clarification from the deceased husband of the petitioner, the

respondent MCD took the decision to prematurely retire the deceased husband of the petitioner. The counsel for the petitioner contended that in the normal course the petitioner would have retired on 30th April, 2003, on his attaining the age of 60 years. The counsel for the petitioner also contended that the respondent had acted at the behest of some adversely interested person in carrying out some kind of unreliable enquiry to trace the exact date of birth of the deceased husband of the petitioner. The counsel also contended that the possibility of the persons having identical particulars in regard to their name and parentage in one school cannot be ruled out, although such person may have different age and residence. The counsel for the petitioner thus contended that there is a serious and blatant violation of principles of natural justice on the part of the respondent in taking the said decision of, unilaterally and arbitrarily, prematurely retiring the deceased husband of the petitioner on 9.11.1999. The counsel for the petitioner also impinged the decision of the respondent MCD in not paying the entire terminal benefits even after taking into consideration the said date of his premature retirement.

6. The counsel for the respondent on the other hand has drawn my attention to the photocopy of school leaving certificate of MCD Primary School, Kanjhawla (East) Delhi, in which the date of birth column shows the date of birth of the deceased petitioner as 8.8.1924. This certificate shows that the deceased petitioner had left the school on 9.7.1934. The counsel for the respondent has also placed reliance on a medical certificate, which describes the age of the deceased petitioner at about 40 years from his appearance. Counsel for the respondent has also drawn my attention to the photocopy of a complaint written by some class IV employee to the Director of Education, MCD, complaining about the fraud played by the deceased husband of the petitioner in disclosing wrong date of his birth. The complainant also informed that correct date of birth of the deceased husband of the petitioner could be ascertained from MCD Primary School, Kanjhawla.

7. The case in hand is a glaring example of the napotic style of functioning of MCD. In a most brazen and blatant manner MCD has flouted the principles of natural justice. The least, MCD could do was to seek a clarification from the deceased husband of the petitioner on

the complaint received against him regarding his correct date of birth. Without taking this little trouble, the respondent MCD is said to have carried out some kind of unreliable investigation and obtained some school leaving certificate of a person with the same name and parentage. Not only this, the respondent MCD also obtained one medical certificate and the printed column of the same makes interesting reading. The same is as follows:-

"MEDICAL CERTIFICATE FORM

I do hereby certify that I have examined Sardar Singh a candidate for employment in the Chowkidar Education Department, and cannot discover that he has any disease, constitutional affection, or bodily infirmity, except NIL I do not consider this a disqualification for employment in the office of.

His age is, according to his own statement 28 years, and by appearance about 40 years.

Left-hand thumb and finger impression:

Fourth or small finger	Third finger	Second finger	First finger	Thumb

L.T.I. of
Sardar Singh

COUNTER SIGNED

Sd/-
Medical Superintendent

HINDU RAO HOSPITAL

Taken before _____

Name of Officer

Designation of Officer Assistant Surgeon
Grade I (Gazetted)
Hindu Rao Hospital
DELHI -8

On (date) 17/6/71"

8. One gets totally flabbergasted to find how any doctor could certify one's age just from his appearance. Photocopy of the school leaving certificate also shows that the date of admission of Sardar Singh, deceased husband of the petitioner is given as 9th June, 1934 and date of school leaving as 9th July, 1934 i.e. just after a period of one month and in the column of remarks it is mentioned that the name was struck off due to regular absence of the student for a period of 6 days. No credence or weightage can be given to such unsubstantiated document. If there was a serious doubt about the age of the petitioner then the MCD could have given the directions to the deceased husband of the petitioner to undergo Ossification Test, which is a medical test to determine the age of a person. However, be that as it may, nothing prevented the respondent to call upon the deceased petitioner by way of show cause notice so as to seek

explanation or for conducting a proper enquiry into the matter. One cannot lose sight of the fact that to retire a person prematurely is a major punishment and such an action could not have been taken by MCD without observing the principles of natural justice.

9. By order dated 9.11.1999, the respondent has cut short the service tenure of the deceased husband of the petitioner for a period of about four years. In normal course the deceased husband of the petitioner would have retired on 30th April, 2003, but he was prematurely retired on 9.11.1999. The illegality of the respondent MCD does not stop here alone. Totally blind folded to the rule of law it passed another order dated 15th July, 2002 for initiating recovery proceedings against the deceased husband of the petitioner, who unfortunately died on 30.12.2004. The entire approach of the MCD is so procrustean and reprehensible and the same deserves utmost condemnation.

10. The power to terminate the service of an employee/workman or for taking any other disciplinary action there has to be strict adherence to laid down procedure and after due observance of principles of natural justice. Grant of Just, fair and

reasonable opportunity is an essential inbuilt of natural justice. The cardinal principle of law is that no one can be condemned unheard. A person against whom any action is in contemplation, has a right of first being informed of the case and then such person should have a reasonable opportunity of presenting his case, thereafter, the concerned authority must act fairly, justly, reasonably, impartially and not in a slipshod manner. Any order involving civil consequences should be made after due observance of the principles of natural justice. It has been held in plethora of cases by the Apex Court that substantive and procedural laws and actions taken under such laws shall have to pass the test under Article 14 of the Constitution. The duty to give reasonable opportunity of being heard will be implied from the nature of the function to be performed by the authority which has vested power to take punitive action. Every executive authority which takes administrative action involving any deprivation or restriction on inherent fundamental rights of the citizens, must take care that justice is not only done but also appears to have been done. It is trite law that procedure prescribed for depriving a person of his livelihood must be strictly followed. It should not be arbitrary,

fanciful or oppressive and should be tested on the touchstone of Article 14 of the Constitution. Wherever any employee in public employment is visited with any punitive action during his employment till his continuation in same, the employer must strictly act in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Article 309 of Constitution or any other statutory provision governing such employment or the rules, regulations or instructions having a statutory flavour.

11. In the instant case, admittedly, no opportunity was given to the deceased employee and no enquiry was held. The order of termination of service of an employee/workman certainly visits him with civil consequences of jeopardizing not only his own livelihood but of his dependants, as well. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play required that the respondent MCD ought to have given reasonable opportunity to the deceased employee to put forth his case and domestic enquiry should have been conducted in compliance with the principles of natural justice. In the present case, conduct of MCD is

not only arbitrary, unjust, unfair and violative of principles of natural justice, but is also highly censurable.

12. In the light of the aforesaid discussion the present writ petition is allowed. The respondent MCD is directed to forthwith release the entire retiral benefits of the deceased husband of the petitioner after taking into consideration the date of birth of the deceased husband of the petitioner as 1.5.1943 and since the husband of the petitioner expired on 30.12.2004, therefore, the date of death of the husband of the petitioner be taken as last date in service for the purpose of granting retiral benefits. This Court is not directing grant of any backwages w.e.f. 1999 till the date of the demise of the deceased husband of the petitioner as the petitioner did not challenge the said order in time, but the entire retiral benefits be paid taking into consideration the date of birth of the deceased husband of the petitioner on 1.5.1943 within two months from the date of this order. Costs of Rs. 10,000/- is also awarded in favour of the petitioner.

September, 2007 **KAILASH GAMBHIR**
rkr **JUDGE**

It is certified that the data has been sent today to the main server.